

**1204 EXAMPLE FIRST DEGREE SEXUAL ASSAULT: AGAINST AN INDIVIDUAL WHO IS 60 YEARS OF AGE OR OLDER — § 940.225(1)(d)**

THE FOLLOWING ILLUSTRATES HOW WIS JI-CRIMINAL 1204 WOULD BE ADAPTED IF THE PREDICATE SECOND DEGREE SEXUAL ASSAULT IS A VIOLATION OF SEC. 940.225(2)(a)

**Statutory Definition of the Crime**

First degree sexual assault, as defined in § 940.225(1)(d) of the Criminal Code of Wisconsin, is committed by one who has sexual (contact) (intercourse) with another person who is 60 years of age or older without consent and by use or threat of force or violence.

**State's Burden of Proof**

Before you may find the defendant guilty of this offense, the State must prove by evidence which satisfies you beyond a reasonable doubt that the following four elements were present.

**Elements of the Crime That the State Must Prove**

1. (Name of victim) was 60 years of age or older at the time of the offense.

Knowledge of (name of victim)'s age by the defendant is not required and a mistake regarding the (name of victim)'s age is not a defense.<sup>1</sup>

2. The defendant had sexual (contact) (intercourse) with (name of victim).
3. (Name of victim) did not consent to the sexual (contact) (intercourse).
4. The defendant had sexual (contact) (intercourse) with (name of victim) by use or threat of force or violence.

The use or threat of force or violence may occur before or as part of the sexual (contact) (intercourse).

**SELECT THE ALTERNATIVES SUPPORTED BY THE EVIDENCE**

[This element is satisfied if the use or threat of force or violence compelled (name of victim) to submit.]

[Use or threat of force or violence on one date can carry over to an alleged sexual assault on a later date if the use or threat of force or violence continued to weigh on (name of victim) and caused (him) (her) to cooperate out of fear for (his) (her) safety.]

[The phrase “by use of force” includes forcible sexual contact or force used as the means of making sexual contact.]

**Meaning of [“Sexual Contact”] [“Sexual Intercourse”]**

REFER TO WIS JI-CRIMINAL 1200A FOR DEFINITION OF “SEXUAL CONTACT” AND WIS JI-CRIMINAL 1200B FOR DEFINITION OF “SEXUAL INTERCOURSE” AND INSERT THE APPROPRIATE DEFINITION HERE.

**Meaning of “Did Not Consent”**

“Did not consent” means that (name of victim) did not freely agree to have sexual [contact] [intercourse] with the defendant. In deciding whether (name of victim) did not consent, you should consider what (name of victim) said and did, along with all the other facts and circumstances. This element does not require that (name of victim) offered physical resistance.

**Jury's Decision**

If you are satisfied beyond a reasonable doubt that all four elements of first degree sexual assault have been proved, you should find the defendant guilty.

If you are not so satisfied, you must find the defendant not guilty.

**Comment**

Wis JI-Criminal 1204 EXAMPLE was approved by the Committee in February 2022.

This instruction illustrates how the general model provided in Wis JI-Criminal 1204 would be adapted for a violation based on § 940.225(2)(a): sexual contact or intercourse with another person without consent of that person by use or threat of force or violence. This offense is a Class B felony – see § 940.225(1).

Modification of the language used in this example may be necessary depending on which predicate second degree sexual assault is being prosecuted.

1. This is the standard statement that is used in other instructions where the victim's age is an element and is based on the complementary rules stated in §§ 939.23(6) and 939.43(2). Although both of those statutes refer to "the age of a minor," sub. (4) of § 940.198 provides a similar rule for this offense: "This section applies irrespective of whether the defendant had actual knowledge of the crime victim's age. A mistake regarding the crime victim's age is not a defense to prosecution under this section." The Committee concluded that the standard statement is clearer; no change in meaning is intended.